



# AFL-CIO

AMERICA'S UNIONS

**American Federation  
of Labor and  
Congress of Industrial  
Organizations**

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July 7, 2022

NLRB FOIA Officer  
National Labor Relations Board  
1015 Half Street, S.E. 4th Floor  
Washington, D.C. 20570  
Facsimile: (202) 273-FOIA (3642)

Re: Request for Records under FOIA

Dear NLRB FOIA Officer:

The AFL-CIO submits the following requests for documents under the Freedom of Information Act (FOIA), 5 U.S.C. § 522. The NLRB has declared in its rulemaking agenda that it will be "revising the representation election procedures located at 29 CFR part 103, with a focus on the amendments issued on April 1, 2020," and that such revisions would relate to, *inter alia*, "procedures governing blocking charges." See NLRB's Spring Rulemaking Agenda Released, <https://www.nlr.gov/news-outreach/news-story/nlrbs-spring-rulemaking-agenda-released> (June 21, 2022).

Accordingly, we ask that the following documents be made available no later than August 8, 2022, so that we will have an opportunity to analyze them in time to utilize that analysis in comments on any Notice of Proposed Rulemaking ("NPRM") that issues on this subject.

## Requests

### Blocking Charges Generally

1. Any document that reveals, for the period since the effective date of the last amendment to the representation case procedures (June 1, 2020):

a. the number of unfair labor practice ("ULP") charges filed together with a request to block an election process pursuant to 29 C.F.R. § 103.20(a) ("blocking charges") and for each such blocking charge any documents that reveal:

b. the case number assigned to the charge and to the associated representation case;

c. the nature of the charge;

d. whether the charge was classified by the regional director under 29 C.F.R. § 103.20(b) or (c) or a merit-determination dismissal case as described in *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022).

e. the disposition of the charge, including whether a complaint was issued, the amount of time required to issue the complaint, the ultimate disposition of the charge by the Regional Director or the Board, and the time required to reach that disposition;

f. for those charges related to representation cases in which the election results were certified, the reason why the charge did not result in the petition being dismissed;

g. the length of time between the filing of the petition and the certification of results in the related representation proceeding;

h. if the election results were ultimately certified in the related representation proceeding, the outcome of the election;

i. if the election results were not ultimately certified in the related representation proceeding, the reason why they were not certified;

j. the type of petition (e.g., RC, RD, or RM) at issue in the related representation proceeding.

### **Blocking Charges Leading to the Impounding of Ballots**

2. Any document that reveals, for the period since the effective date of the last amendment to the representation case procedures (June 1, 2020):

a. the number of blocking charges that resulted in election ballots being impounded pursuant to 29 C.F.R. § 103.20(c); *see also* NLRB Casehandling Manual 11730.2, and for each such blocking charge any documents that reveal:

b. the case number assigned to the charge and to the associated representation case;

c. the nature of the charge;

d. the basis of the decision to impound the ballots in the related representation case;

e. the length of time that the ballots in the related representation case remained impounded;

f. the disposition of the charge, including whether a complaint was issued, the amount of time required to issue the complaint, the ultimate disposition of the charges by the Board, and the time required to reach that disposition;

g. if the ballots in the related representation case were never counted, the reason why they were never counted;

h. if the ballots in the related representation cases were counted, the reason why they were counted;

i. if the ballots in the related representation case were counted, whether they were counted because a complaint did not issue within 60 days even though the charge was not withdrawn or dismissed during those 60 days;

j. the determination of the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and NLRB Casehandling Manual 11730.4, as to what effect the conduct described in the blocking charge had on the election petition;

k. if the election results in the related representation case were ultimately certified, the outcome of the election;

l. the type of petition that initiated the related representation case (e.g., RC, RD, RM).

### **Blocking Charges Leading to the Immediate Counting of Ballots**

3. Any document that reveals, for the period since the effective date of the last amendment to the representation case procedures (June 1, 2020):

a. the number of blocking charges that resulted in election ballots being counted at the conclusion of the election pursuant to 29 C.F.R. § 103.20(b); *see also* NLRB Casehandling Manual 11730.3 and for each such charge any documents that reveal:

b. the case number assigned to the charge and to the associated representation case;

c. the nature of the charge;

d. the basis of the decision not to impound the ballots in the related representation case;

e. the disposition of the charge, including whether a complaint was issued, the amount of time required to issue the complaint, the ultimate disposition of the charges by the Board, and the time required to reach that disposition;

f. the determination of the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and NLRB Casehandling Manual 11730.4, as to what effect the conduct described in the blocking charge had on the election petition;

g. if the election results in the related representation case were ultimately certified, the outcome of the election;

h. the type of petition that initiated the related representation case (e.g., RC, RD, RM).

### **Merit Determination Dismissals**

4. Any document that reveals, for the period since the effective date of the last amendment to the representation case procedures (June 1, 2020):

a. the number of blocking charges that resulted in the petition being dismissed pursuant to the rule described in *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022) (“merit determination dismissals remain available under the Election Protection Rule”), and for each such charge any documents that reveal:

b. the case number assigned to the charge and to the associated representation case;

c. the nature of the charge;

d. the basis of the decision to dismiss the petition in the related representation case;

- e. the disposition of the charge, including whether a complaint was issued, the amount of time required to issue the complaint, the ultimate disposition of the charges by the Board, and the time required to reach that disposition;
- f. the determination of the Regional Director or the Board pursuant to 29 C.F.R. § 103.20(d) and NLRB Casehandling Manual 11730.4, as to what effect the conduct described in the blocking charge had on the election petition;
- g. the type of petition that initiated the related representation case (e.g., RC, RD, RM).

### **Other Requests**

- 5. Any document containing or evidencing any general (*i.e.*, not involving only particular cases) analysis, compilation or summary of the allegations in or the disposition of blocking charges filed since the effective date of the last amendment to the representation case procedures (June 1, 2020).
- 6. Any document containing or evidencing any form of analysis of the last amendments of 29 C.F.R. § 103.20 or their impact on unfair labor practice or representation case processing.
- 7. Any document identifying any or all cases decided since January 1, 2000, in which the Board took evidence or made findings concerning the cost of participating in a Board-supervised election for either a union or an employer.
- 8. Any documents responsive to requests 1-15 in our prior FOIA request, NLRB-2019-001262, that relate to the period after that covered in your response to that request and before the effective date of the last amendments of 29 C.F.R. § 103.20.

### **Fee Waiver**

For purposes of determining fees associated with processing our FOIA request, please be advised that the AFL-CIO is an “other” requester under the NLRB Rules and Regulations, Section 102.117(d)(2). Although “other” requesters are charged only for searches and photocopying (with no charge for the first two hours of search time or for the first 100 pages of photocopies), we request that any fees associated with processing our request be waived pursuant to NLRB Rules and Regulations, Section 102.117(d)(2)(vi). Under that section, “[d]ocuments are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.” *Id.*; 5 U.S.C. § 552(4)(A)(i)).

We address the two requirements applied by the Board to determine whether the AFL-CIO qualifies for a fee waiver: 1) the public interest requirement and 2) whether disclosure of the information is not primarily in the requester’s commercial interest.

In relation to the public interest requirement, the requested documents specifically concern identifiable operations or activities of the government. In particular, the requested documents concern the NLRB’s recently announced rulemaking agenda. The rules at issue were promulgated on April 1, 2020, following a NPRM issued on August 12, 2019, in which the AFL-CIO provided detailed comments. The AFL-CIO anticipates providing similarly comprehensive

comments in response to any NPRM issued by the Board, and the responsive documents will permit us to provide responsive, relevant and meaningful information to the Board as it considers and determines the appropriate standards and procedures to apply to blocking charges. The proposed rules will affect the Board's operations and activities such as processing and handling representation petitions and unfair labor practice charges, and the public has a great interest in understanding the scope of the proposed rules' impact, including possible changes in employee and employer rights under the proposed rules. Indeed, by engaging in rulemaking on these subjects, the Board has recognized the importance of these issues to the public.

The AFL-CIO intends to use the requested documents in its response to an eventual NPRM issued by the Board on behalf of its affiliated national and international unions, their local unions, and the employees they represent and who wish to be represented by them. The requested documents will enrich our critical and unique contribution to the Board's deliberations and the public understanding, and we do not seek in any way to further our own "individual" understanding.

In relation to the requested documents not being primarily in our commercial interest, the AFL-CIO has no commercial interest in the documents. We will not trade in the documents or use the documents to further any commercial transactions. We seek the documents *solely* for use in responding to the Board's NPRM process and to assist the Board in developing rules in the three relevant areas that are consistent with the Act and efficiently advances its purposes. While the information sought is of interest to our affiliated national and international unions and their locals and members, we do not believe that this is the type of commercial interest contemplated by Congress under FOIA. But, even if it is, it is extremely attenuated as attributed to the AFL-CIO in this situation and clearly outweighed by the public interest identified and explained above.

Please let me know if additional information is needed to process our request for documents and a fee waiver.

Thank you for your timely attention to this matter.

Sincerely,

/s/Craig Becker

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